



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 2, 2004

Ms. Pamela Smith
Sr. Assistant General Counsel
Texas Department of Public Safety
P. O. Box 4087
Austin, Texas 78773-0001

OR2004-5430

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 204403.

The Texas Department of Public Safety (the "department") received a request for five categories of information related to the issuance of a specified driver's license and internal investigations related to the issuance of the specified or similar driver's licenses. You state that the department has no responsive information regarding any internal investigations.¹ You claim that the remaining requested information is excepted from disclosure under section 552.130 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

¹We note that the Public Information Act (the "Act") does not require the department to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

...

- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

...

- (b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Gov't Code § 552.130. Generally, under section 552.130, the department would be permitted to release information relating to a Texas driver's license only if, and in the manner, authorized by chapter 730 of the Transportation Code.

The purpose of chapter 730 of the Transportation Code, also known as the Motor Vehicle Records Disclosure Act, is to "protect the interest of an individual in the individual's personal privacy by prohibiting the disclosure and use of personal information contained in motor vehicle records, except as authorized by the individual or by law." Transp. Code § 730.002. Section 730.003 of the Transportation Code provides that, for purposes of chapter 730:

- (1) "Agency" includes any agency or political subdivision of this state, or an authorized agent or contractor of an agency or political subdivision of this state, that compiles or maintains motor vehicle records.

...

- (4) "Motor vehicle record" means a record that pertains to a motor vehicle operator's or driver's license or permit, motor vehicle registration, motor vehicle title, or identification document issued by an agency of this state or a local agency authorized to issue an identification document. The term does not include:

- (A) A record that pertains to a motor carrier; or

- (B) an accident report prepared under Chapter 550 or 601 [of the Transportation Code].

...

- (6) "Personal information" means information that identifies a person, including an individual's photograph or computerized image,

social security number, driver identification number, name, address, but not the zip code, telephone number, and medical or disability information. The term does not include:

(A) information on vehicle accidents, driving or equipment-related violations, or driver's license or registration status; or

(B) information contained in an accident report prepared under Chapter 550 or 601.

Id. § 730.003(1), (4), (6). Section 730.004 provides as follows:

Notwithstanding any other provision of law to the contrary, including Chapter 552, Government Code, except as provided by Sections 730.005-730.007, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.

Id. § 730.004. Thus, except as provided by sections 730.005 through 730.007, section 730.004 does not permit the release of "personal information" obtained by an "agency" in connection with a "motor vehicle record."

We find that the department is an "agency" for purposes of chapter 730. *See* Transp. Code § 730.003(1). Furthermore, the submitted information qualifies as "motor vehicle records," as defined by section 730.003(4). Section 730.007 of the Transportation Code enumerates the requestors who are eligible to receive information from the department. The requestor here is not one of the persons listed in section 730.007. Therefore, to the extent that the submitted information consists of "personal information" under section 730.003(6), the department may not release such information. *See id.* § 730.004; *see also id.* §§ 730.005, .006, .007. We have marked the information that must be withheld from disclosure under section 552.130 of the Government Code in conjunction with section 730.004 of the Transportation Code.

Additionally, we note that the current status of the license is governed by sections 521.045, 601.022 and 730.007 of the Transportation Code. Section 521.045 provides:

On receipt of a written request and payment of a \$4 fee, the department may disclose information relating to an individual's date of birth, current license status, and most recent address, as shown in the department's records, to a person who:

(1) is eligible to receive the information under Chapter 730; and

- (2) submits to the department the individual's driver's license number or the individual's full name and date of birth.

Transp. Code § 521.045. Section 601.022(a) states that the department "shall provide any person a certified abstract of the record of conviction of a person subject to this chapter for violation of a law relating to the operation of a motor vehicle or the record of any injury or damage caused by the person's operation of a motor vehicle if the requestor is eligible to receive the information under Chapter 730." *Id.* § 601.022(a). As noted above, the requestor here is not one of the persons listed in section 730.007. Thus, the department must also withhold the license holders' date of birth and license status, which we have marked pursuant to section 521.045 of the Transportation Code.

Finally, section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 521.142 of the Transportation Code provides in pertinent part:

....

(f) Information supplied to the department relating to an applicant's medical history is for the confidential use of the department and may not be disclosed to any person or used as evidence in a legal proceeding other than a proceeding under Subchapter N. This subsection does not apply to information provided by an applicant under Subsection (h).

....

(h) The application must provide space for the applicant to voluntarily list any health condition that may impede communication with a peace officer as evidenced by a written statement from licensed physician.

Transp. Code § 521.142(f), (h). You have marked the applicant's medical history information that was supplied to the department. Upon review, we note that this information is not the type of information that would have been provided by the applicant under subsection (h). Therefore, we agree that the department must withhold the information you have marked pursuant to section 552.101 of the Government Code in conjunction with section 521.142(f) of the Transportation Code.

In summary, we conclude that: 1) the department must withhold the information we have marked under section 552.130 of the Government Code in conjunction with section 730.004 and section 521.045 of the Transportation Code; and 2) the department must withhold the information you have marked pursuant to section 552.101 of the Government Code in

conjunction with section 521.142(f) of the Transportation Code. All remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge

this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in dark ink, appearing to read "W. Montgomery Meitler". The signature is fluid and cursive, with the first name "W." and last name "Meitler" being more distinct than the middle name "Montgomery".

W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/krl

Ref: ID# 204403

Enc: Submitted documents

c: Mr. Dave Fehling
Reporter
KHOU-TV
1945 Allen Parkway
Houston, Texas 77019
(w/o enclosures)